

144243

Schatz



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Southeastern Chiller Services, Inc.

File: B-243158

Date: June 24, 1991

David L. Royer for the protester.
Marilyn Walter Johnson, Esq., and Vicki E. O'Keefe, Esq.,
Department of the Navy, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Cancellation of small business-small purchase set-aside under a request for quotations (RFQ) was proper where protester, the only small business submitting a quote, conditioned its compliance with the RFQ's 10-day completion schedule in telephone call to agency after submission of quote; although protester disputes agency's interpretation that it qualified quote, based on record agency's interpretation was reasonable.

DECISION

Southeastern Chiller Services, Inc. (SCS) protests the cancellation of Department of the Navy request for quotations (RFQ) No. N62467-91-M-4732, a small business-small purchase set-aside, and the subsequent award of a contract to a large business, McQuay Services, for the repair of a chiller. The chiller cools computer mainframes, which were used by the Naval Air Station, Jacksonville, Florida for processing requisitions in support of Operation Desert Shield.

We deny the protest.

The repair services for the McQuay chiller were urgently required because the breakdown of the chiller caused the Navy's computer mainframes to be shut down, which resulted in an extensive loss of revenue to the government, and discontinuation of all processing of requisitions for Operation Desert Shield. Thus, on November 15, 1990, the Navy issued this RFQ as a small business-small purchase set-aside in accordance with Federal Acquisition Regulation (FAR) § 13.105. The RFQ advised that all repair work must be completed within 10 calendar days after award.

On the morning of November 15, the Navy called three companies, including the protester, and requested that quotes for the repair services be submitted by 4 p.m. that day. Two companies submitted timely quotes: McQuay, a large business and manufacturer of the chiller, submitted the low quote at \$21,500, while SCS, a small business, was second low at \$24,277; the government estimate was \$17,437.50.

Approximately 10 minutes before the 4 p.m. deadline for receipt of quotes, SCS' president telephoned the cognizant contracting specialist. A portion of the ensuing conversation is in dispute. The agency states that SCS advised that it would be able to comply with the RFQ requirements if notified of the award "by the end of the day" to allow time for ordering parts. SCS asserts that it stated only that it "might" not be able to obtain the only motor available if it was unable to place an order for new motor windings "within a day." The agency advised that notice could not be given that same day due to a need to request additional funding that would delay the award decision until the next day.

On November 16, based on its understanding that SCS had qualified its quote on receiving award notification by the end of the prior day, the agency determined that no acceptable small business quotes had been received, and therefore canceled the small business-small purchase set-aside. See FAR § 13.105(d)(3). The agency then issued a purchase order to McQuay based on its low quote. After denial of its agency-level protest, SCS filed this protest in our Office.


SCS argues that the Navy improperly canceled the set-aside and made award to McQuay instead of making award to SCS as the low, acceptable small-business quoter. This argument is based on SCS' account of its conversation with the Navy during which it allegedly stated that it could meet the requirement, but "might" not be able to perform if not advised of the award decision "within a day" after the conversation. SCS did not prepare a contemporaneous record of this conversation. SCS maintains that the Navy should have contacted SCS the next day, before proceeding with the award to McQuay, to determine whether the firm in fact could still meet the agency's requirements.

We find the Navy's actions unobjectionable. While SCS agreed to comply with the terms of the RFQ in its quote, including the 10-day performance requirement, its telephone call to the agency introduced into the agency's deliberations a timing consideration not evident from the firm's quote. Specifically, whether or not intended as such by SCS, its statement that it "might" not be able to perform absent award notification by a certain time qualified its quote as to the firm's

ability to meet the delivery schedule. The Navy understood SCS' statements as imposing a same day award notification contingency on SCS' ability to meet the schedule and, even if the agency misinterpreted SCS' intended message, we cannot say that its understanding was unwarranted. In this regard, SCS claims it requested notice only "within a day," but does not indicate that it made reference to a specific time or date, or that the Navy acknowledged understanding that SCS needed notice only by the next day, and has furnished no contemporaneous notes documenting the conversation.

Given that SCS initiated the telephone call in question to qualify its quote (even under SCS' version of the conversation), we think it was incumbent on the firm to assure that there was no doubt as to the information it was providing, particularly considering that the qualification concerned the performance schedule for an urgent requirement. On this record, we cannot find that it did so. Under these circumstances, there is no basis for objecting to the cancellation of the set-aside and the award to McQuay.

The protest is denied.


for James F. Hinchman
General Counsel